

REMARKS

I. CLAIM WORDING OBJECTIONS

The wording of claims 4 to 7 and 11 was objected to for informalities in paragraphs 1 and 2 on page 2 of the Office Action.

The original claims 1 to 13 of the above-identified US National Stage Application were English translations of claims of a foreign patent application and were not prepared in accordance with US Patent Practice and the rules of the US Patent Office.

New claims 14 to 26 have been added and the original claims 1 to 13 have been canceled. The new claims 14 to 26 contain the same subject matter as canceled claims 1 to 13 respectively, but have been drafted so that they comply with the formal aspects of US Patent Office Rules for patent claims and with US Patent Practice generally.

Specifically claims 17 to 20 contain the subject matter of objected-to claims 4 to 7, which have been canceled. Claims 4 to 7 did not express the claimed alternatives with acceptable Markush wording. New claims 17, 18, and 20 use the standard format for Markush wording, “selected from the group consisting of”. Markush wording is not necessary in claim 19, which contains the subject matter of canceled claim 8. Claim 19 claims preferred embodiments of the alkoxylate of claim 14 consisting of ethoxylated fatty alcohols of the stated formula. The term “fatty alcohol polyglycol ethers” is of course an alternative

name for the compounds of formula I and is unnecessary in new claim 19.

The new claims have also been checked for typographical errors such as occurred in claim 11. The typographical error of claim 11 does not occur in the new claims.

For the foregoing reasons and because of the filing of the new claims withdrawal of the objection to the claim wording is respectfully requested.

II. FORMAL REJECTIONS OF CLAIM 13

Claim 13 was rejected under 35 U.S.C. 101 for being in a form that is not permitted by the US Patent Statute and for indefiniteness under 35 U.S.C. 112, second paragraph.

New claim 26 replaces canceled claim 13, but has been drafted as a claim for a method of making a dye carrier composition with a nacreous luster effect. This does not introduce “new matter” because the subject matter of the canceled claim 13 covers a method of using the stated combination to make dye carrier compositions that have a nacreous luster.

The new claim 26 overcomes the rejection for indefiniteness because it recites a single step of including the stated combination in the dye carrier composition.

New claim 26 thus does recite a single method step and is in acceptable statutory form.

For the foregoing reasons it is respectfully submitted that new claim 26

should not be rejected under 35 U.S.C. 112, second paragraph, for indefiniteness or under 35 U.S.C. 101.

III. AMENDED ABSTRACT

The abstract was amended to comply with US Patent Office Rules by deletion of legalistic wording, which is not permitted in US abstracts, and by deletion of repetitive wording. In addition some additional subject matter from canceled claims 2 and 3 has been added to cover preferred embodiments.

IV. SPECIFICATION CHANGES

A cross-reference, which makes reference to the International Application and International filing date (which is the effective filing date of the US National Stage Application), has been added to page 1 of the specification.

Standard section headings have been added to the specification, as recommended by US Patent Office Rules.

V. OBVIOUSNESS REJECTIONS

1. Pratt in view of Allwohn, with or without Cannell

Claims 1 to 5 and 7 to 13 were rejected as obvious under 35 U.S.C. 103

(a) over Pratt, et al (US 2004/019982 A1), in view of Allwohn, et al (US 6,372,203).

Claim 6 was rejected as obvious under 35 U.S.C. 103 (a) over Pratt, et al (US 2004/019982 A1), in view of Allwohn, et al (US 6,372,203), and further in view of Cannell, et al (US 6,015,574).

New claims 14 to 26 replace canceled claims 1 to 13.

The applicants' claimed invention is a dye carrier composition that has a stable nacreous luster. The purpose of their work was to formulate dye carrier compositions that have a nacreous luster (see page 1, lines 23 to 40, and also page 2, lines 4 to 7, of the English translation of applicants' specification). The stable nacreous luster is obtained when the combination of the four ingredients, namely the fatty alcohol, alkanolamide, alkoxylate, and anionic surfactant, is present in the dye carrier composition and the four ingredients are present in respective amounts within the claimed amount ranges.

The term "nacreous", according to Webster's Online Dictionary, means (1) "consisting of or resembling mother-of-pearl" or (2) "having a play of lustrous rainbow-like colors". The following argumentation is based on the assumption of agreement regarding this definition for the term "nacreous" during claim construction. In other words, "nacreous" has a more limited meaning than the term "lustrous" and should not be interpreted broadly to encompass any composition that appears to be simply "lustrous". Any composition that is "nacreous" exhibits a play of colors – due to refraction effects and possibly other

effects such as interference, which occur when light strikes a sample of the material.

The primary reference, Pratt, et al, does disclose dye carrier compositions, but does not even mention the terms “lustrous” or “nacreous”. The invention of Pratt, et al, comprises new hair dye compositions containing certain special dissociative azo dye compounds (paragraphs [0008] to [0017], abstract). The disclosure of Pratt, et al, on pages 1 to 23 of this Published US Patent Application, primarily comprises the general formulae and specific examples of these special dissociative azo dye compounds, which provide good dyed hair properties, such as fastness to light, perspiration, washing, friction, and heat (see paragraphs [0005] & [0006]).

Allwohn, et al, discloses a hair treatment composition containing a new class of polymers or copolymers, ethylenically unsaturated saccharides and saccharide derivatives. In addition to hair care or hair fixing properties these compositions have good biodegradability and improve transport and adherence of the active ingredients to the hair (column 1, lines 38 to 59). However Allwohn, et al, also does not mention the term “nacreous” and does not explain how their compositions can be formulated so as to have a nacreous luster effect.

Cannell, et al, also does not disclose how to formulate their compositions to produce a nacreous luster effect and has an entirely different object of invention from that of the present application. Also Cannell, et al, is only cited to provide a basis for rejecting the claim 6 (now claim 19) that claims an ethoxylated fatty alcohols with specific chemical formulae.

Pratt, et al, does disclose that their azo-dye-containing dye compositions can contain certain optional well-known cosmetic additive ingredients, which are used in many different cosmetic compositions. The well-known optional cosmetic additive ingredients do include fatty alcohols, alkoxylates, alkanolamides, and anionic surfactants, but they also include other additive ingredients such as cationic surfactants (see paragraphs [0114] & [0127]) and cationic polymers (paragraph [0096]).

Pratt, et al, teaches the equivalence of all the recited optional additive ingredients, e.g. the equivalence of the cationic surfactants, the cationic polymers and the anionic surfactants.

In contrast, applicants' claimed dye carrier compositions of new claims 14 and 26 are limited to a special combination of four types of known cosmetic additive ingredients, namely fatty alcohol, alkanolamide, alkoxylate, and anionic surfactant in amounts within the claimed amount ranges. No prior art reference of record teaches that their cosmetic compositions should include a combination of these four types of ingredients and certainly no reference teaches that the amounts of the four ingredients should be within the amount ranges as claimed in claims 14 and 26. Pratt, et al; Allwohn, et al; and Cannell, et al, alone or together do not teach or suggest that, if a dye carrier composition includes the four types of ingredients in amounts within the claimed concentration ranges, the dye carrier composition will exhibit a nacreous luster effect.

It is respectfully submitted that the combination of Pratt, et al; Allwohn, et al; and Cannell, et al, cannot and do not establish a case of *prima facie*